IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 10282 of 1994 AND W.P.NO.10283 OF 1994

W.P.NO.10282 OF 1994:

Between:

1. S.M.Devarajulu, S/o S.M.Srinivasulu, aged about 52 years, Grade-I Mechanic, E.No.93306, R/o Venkatagiri Depot, Nellore District.

2. N.B.K.Chetty, S/o N.Narsimulu, aged about 39 years, Mechanic Grade-I, E.No.85476, R/o Venkatagiri Depot, Nellore District.

..... PETITIONERS

AND

1. The A.P.S.R.T.C.., rep.,by its Managing Director, Mushirabad, Hyderabad.

2. The Divisional Manager, A.P.S.R.T.C.,Nellore Division, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 2nd respondent and issue a writ, order or direction particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in proceedings No.E-2/145(15)/90-DVMR (NLR), dated 1.03.1994 reverting the petitioners from the post of Grade-I Mechanic to the post of Grade-II Mechanic and ordering recovery of the emoluments from their salary, as illegal, unjust, contrary to law, in violation of principles of natural justice and not bonafide.

WRIT PETITION NO : 10283 of 1994

Between:

..... PETITIONER

V.S.Gopalakrishna, S/o V.G.Subrahmanyam, aged about 37 years, Grade-I Mechanic, E.No.95196, Regional Workshop, Nellore District

AND

1. The APSRTC rep.,by its Managing Director, Mushirabad, Hyderabad.
2. The Divisional Manager, APSRTC, Nellore Division, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 2nd respondent and issue a writ, order or direction particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in proceedings No.E2/145(15)/90-DVM (NLR) dated 11.03.1994 reverting the petitioner from the post of Grade-I Mechanic to the pot of Grade-II Mechanic and also ordering for recovery of the amount paid to him during the period of his promotion, as illegal, unjust, contrary to law and in violation of principles of natural justice.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO IN BOTH PETITIONS

Counsel for the Respondents: MR.R.MANMADHA REDDY (SC FOR APSRTC) IN BOTH PETITIOONS

The Court made the following :

COMMON ORDER:

In both W.P.No.10282 of 1994 and W.P.No.10283 of 1994, the very same proceedings of the Divisional Manager, APSRTC, Nellore dated 11.03.1994, whereby the petitioners were reverted from the post of Grade-I Mechanic to that of Grade-II Mechanic and the amount paid to them during the period of promotion was directed to be recovered, are the subject matter of challenge.

The facts, relevant for the purpose of this writ petition, in brief are that the petitioners herein were initially appointed as Cleaners in the APSRTC, they were subsequently promoted as Grade-II Mechanics and vide office order dated 23.05.1991, were again promoted to the post of Mechanic Grade-I with effect from 01.07.1990 in terms of Regulation-30 of APSRTC employees (recruitment) Regulation, 1966 in the pay scale of Rs.1125-1935. The said office order dated 23.05.1991 makes it clear that their promotion was subject to certain terms and conditions among which was that the promotion was purely on temporary basis and that they would be reverted to the former post of Grade-II Mechanic, without any notice or assigning any reasons.

Mr. A.K. Jayaprakash Rao, learned Counsel for the petitioners, refers to the proceedings cited as reference in the proceedings dated 23.05.1991, i.e., the proceedings of the selection committee dated 15.05.1991 and submits that promotion of the petitioners as Grade-I Mechanics was on regular basis, pursuant to a selection by duly constituted selection committee and not a temporary promotion, which under Regulation-30, is required to be made by the appointing authority and not a selection committee. I am afraid, I cannot agree. While it is true that the office

order dated 23.05.1991 makes a reference to the proceedings of the selection committee dated 15.05.1991, the said order dated 23.05.1991 specifically refers to Regulation-30 of the APSRTC (recruitment) Regulation, 1966 which relates only to temporary promotions. Further, clause-2 of the terms and conditions specified therein makes it clear that the promotion of the petitioners was purely on temporary basis, which specification is in accordance with Regulation 30(5) of the APSRTC Regulation, 1966. As such, promotion of the petitioners as Grade-I Mechanics, vide office order dated 23.05.1991, is only a temporary promotion under Regulation-30.

The 2nd respondent, vide office order dated 11.03.1994, reverted the petitioners to the post of Mechanics Grade-II on the ground that their earlier promotion as Mechanics Grade-I, with effect from 01.07.1990, was as per the seniority list published on 18.10.1991, that the said seniority list had been cancelled and a final seniority list subsequently published vide notification dated 24.09.1992. The Depot Managers were advised to take action to recover the extra emoluments, paid earlier to the petitioners as Mechanic Grade-I, consequent to their reversion as Mechanic Grade-II. Mr. A.K. Jayaprakash Rao, learned Counsel contends, rightly so, that the petitioners having discharged the functions of Mechanic Grade-I, pursuant to the promotion vide office order dated 23.05.1991, were entitled to receive the salary and emoluments being paid to Mechanics Grade-I and merely because they were reverted as Mechanics Grade-II, it was not open to the respondents to recover the emoluments paid to them earlier as Mechanics Grade-I. It is clear from the office order dated 23.05.1991 that the petitioners herein were promoted, albeit on temporary basis under Regulation-30, as Mechanics Grade-I and since their promotion was in accordance with the statutory regulations and they had discharged the functions of Mechanics Grade-I, on their reversion to their substantive posts as Mechanics Grade-II in terms of Regulation-30(5) the emoluments paid to them, during the period when they discharged the functions of Mechanics Grade-I, cannot be recovered. It is fairly stated by the respondents in their counter-affidavit that the Divisional Manager, by order dated 17.06.1994, had directed that no recovery be made until further orders. Needless to state that this order of the Divisional Manager dated 17.06.1994 is in accordance with law and the respondent authorities are not entitled to recover emoluments paid to the petitioners during the period they discharged the functions of the higher post of Mechanic Grade-I, even though they were subsequently reverted to their substantive post of Mechanics Grade-II, the

promotion of Mechanic Grade-I being purely temporary under Regulation-30 of the APSRTC Regulations.

Mr. A.K. Jayaprakash Rao, learned Counsel for the petitioners, further contends that persons junior to the petitioners herein were promoted with effect from 01.071992, whereas the petitioners were promoted subsequently, only with effect from 01.07.1994. He relied on Regulation 30(6) which empowers the appointing authority, on the subsequent promotion of the person who had earlier been temporarily promoted to a higher post, to determine, in his discretion, the date from which such employees probation should commence. It is his case that since persons junior to the petitioners were promoted with effect from 01.07.1992, there should be a direction to the respondent to promote the petitioners also with effect from that date.

The petitioners were subsequently promoted as Grade-I Mechanic with effect from 01.07.1994. (Office order of the Regional Manager, Nellore dated 27.01.1995). The seniority list subsequently finalized vide notification dated 24.09.1992, shows respondents 3 and 4 as seniors to the petitioners and since the seniority list has attained finality, the contention of Mr. A.K. Jayaprakash Rao that the petitioners herein are seniors to respondents 3 and 4 cannot be accepted.

Be that as it may, Regulation 30(6) undoubtedly confers a discretion on the appointing authority to consider the date from which the probation of a promoted candidate is required to be determined. Keeping in mind the fact that the petitioners herein were temporarily promoted vide office order dated 23.05.1991, till they were reverted vide office order dated 11.03.1994, and that they had discharged the functions of Mechanics Grade-I for a period of three years, the 2nd respondent-appointing authority, is directed to exercise his discretion in terms of Regulation 30(6), consider the case of the petitioners and determine the date from which their probation in the category of Mechanics Grade-I should be commence. This exercise shall be completed by the respondent as expeditiously as possible not later than two months from the date of receipt of a copy of this order.

Both the writ petitions are accordingly disposed of. No costs.

(RAMESH RANGANATHAN, J)

Dated:30.06.2005

MRKR

To

1. The A.P.S.R.T.C.., rep.,by its Managing Director, Mushirabad, Hyderabad.
2. The Divisional Manager, A.P.S.R.T.C.,Nellore Division, Nellore.
3. Two C.D.copies.

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